IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1993 of 2007
To
FIRST APPEAL No. 2003 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
MOTIBHAI HUSENBHAI DESAI - Defendant(s)

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Appearance :
MS KRINA CALLA AGP IN First Appeal Nos. 1993 to 1998 of 2007 and MR JASWANT K SHAH AGP in First Appeal Nos. 1999 to 2003 of 2007 for Appellants.
MR GHANSHYAM H AMIN AND SAURABH G AMIN for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.Saurabh Amin, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common award dated October 29, 2005 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura, in Land Acquisition Cases No. 2670 to 2680 of

1996, by which the claimants have been awarded additional amount of compensation at the rate of Rs.63/- ps. per sq.mt. for their acquired lands, over and above the compensation awarded to them at the rate of Rs. 1.50 ps. per sq.mt. for irrigated lands and Rs.1.00 ps. per sq.mt. for non-irrigated lands by the Special Land Acquisition Officer vide award dated October 29, 2005.

3. The Executive Engineer, Narmada Project Saurashtra Branch Canal, Div.No.2/4, Bhavnagar proposed to the State Government to acquire agricultural lands of village Dhandhuka, Taluka : Dhandhuka, District : Ahmedabad, for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Dhandhuka specified in the said proposal were likely to be needed for the said public purpose. Therefore, notification under Section

4(1) of the Act was issued, which was published in the Official Gazette on June 4, 1993. Thereafter inquiry was made under Section 5 of the Act and on the basis of the report received from the Special Land Acquisition Officer made under section 5A(2) of the Act, the State Government made declaration under Section 6 of the Act, which was published in the Official Gazatte on June 1, 1994. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated May 30, 1996 offered compensation to the claimants at the rate of Rs. 1.50 ps. per sq.mt. for irrigated lands and Rs. 1.00 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition Officer

was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos. 2670 to 2680 of 1996.

4. On behalf of the claimants, Mr. Shabbir Mohammadbhai Patel was examined at Exh.28. The witness claimed in his testimony that village Dhandhuka was a Taluka Headquarter and was fully developed. According to him, the lands acquired were highly fertile and as water was available in abundance, each claimant was able to raise crops of cotton, juvar, cumin-seeds, til, wheat etc. and was earning Rs. 40,000/- per bigha per year from the sale of agricultural produces. The witness mentioned that earlier also lands from this very village were acquired for which the

Reference Court had awarded compensation to the claimants at the rate of Rs.52.50 ps. per sq.mt. and therefore, on the basis of the said previous award, the claimants were entitled to enhanced compensation. Though this witness was cross-examined by the learned Counsel for the acquiring-authorities, nothing substantial could be elicited, nor the assertion made by the witness that earlier from this very village lands were acquired and the claimants therein were awarded compensation at the rate of Rs. 52.50 DPs. per sq.mt., could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Abdulbhai Aslamji Patel was examined at Exh.33. From his testimony, it is evident that at the time of giving deposition, he was discharging duties as Deputy Executive Engineer, Dhandhuka. According to him, the Special Land Acquisition Officer had taken into consideration all the relevant factors while determining the

amount of compensation payable to the claimants and, therefore, the claimants were not entitled to enhanced compensation. However, in cross-examination, it was admitted by him that he had no personal knowledge about the proceedings initiated for acquiring the lands in the instant case. It was further admitted by him that he was deposing before the Court on the basis of official record made available to him.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village, was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The learned Judge noticed that notification under Section 4(1) of the Act was published in the Official Gazette on January 7, 1991 for acquiring the lands earlier from this village; whereas in the instant case, notification under

Section 4(1) of the Act was published in the Official Gazette on June 4, 1993, and in view of time-gap of about three years, the claimants were entitled to the benefit of reasonable rise in price of lands at the rate of 10% per annum. On the basis of the previous award of the Reference Court relating to the lands of this very village, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.63/- ps. per sq.mt. by the impugned award, giving rise to the above-numbered appeals.

7. This Court has heard Ms.Krina Calla, learned Assistant Government Pleader for the appellants and Mr.Saurabh Amin, learned counsel for the claimants at length in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. The contention that the sale deeds produced along with list Exh.32 were not considered and, therefore, the impugned award should be set aside has no substance. It may be mentioned that on behalf of the acquiring authorities witness Abdulbhai Asmalji Patel who was then discharging duties as Dy. Executive Engineer was examined at Exh.33 on October 6, 2005. The said witness did not refer to any of the sale deeds which were sought to be produced along with the list Exh.32. Further the record does not indicate that the contents of the documents sought to be produced on behalf of the acquiring authorities were admitted by the learned counsel for the claimants nor any endorsement was made by the learned counsel for the claimants that the same be exhibited and read in evidence. The record does not indicate that the documents which were sought to be relied upon by the acquiring authorities were ever exhibited. When the documents were not proved as required by the law and not accepted, it would be wrong to contend that the same were

arbitrarily brushed aside from consideration. What is relevant to notice is that the witness for the acquiring authorities could not establish before the reference court that the lands which were covered by the sale deeds sought to be produced along with the list Exh.32 were similar in all respects to the lands acquired in the instant case. On the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court had no occasion to consider the contends of the documents which were sought to be produced along with list Exh.32 and, therefore, the impugned award cannot be set aside on the spacious plea that the same were not considered by the Reference Court. It is true that the claimants could not make good their assertion that each claimant was earning Rs.40,000/- per bigha per year from the sale of agricultural produces. However, the record does not indicate that the enhanced compensation was claimed by the claimants on the basis of yield obtained from the acquired lands. The record also

does not indicate that the enhanced compensation was claimed by the claimants on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of this very village, which was produced at Exh.27. The perusal of Exh.27 indicates that the lands of Dhandhuka town were acquired for the public purpose of construction of residential and non-residential quarters pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on January 7, 1991. Therein, the Land Acquisition Officer by his award dated April 8, 1993 had awarded compensation to the claimants at the rate of Rs. 33.30 ps. per sq.mt. Feeling aggrieved by the said offer, the claimants had sought reference. Accordingly, reference was made to the District Court, Ahmedabad (Rural), where it was numbered as Land Acquisition Case No.775 of 1995. In the said case, on behalf of the claimants, witness Alimahamad Adambhai was examined at Exh.30,

whereas on behalf of the acquiring authorities, witness Narendrabhai Narandas Bhavsar was examined at Exh.34. On appreciation of evidence adduced by the parties, the Reference Court by judgment and award dated April 24, 2002 awarded additional amount of compensation to the claimants at the rate of Rs.19.20 ps. per sq.mt. Mr.Saurabh Amin, learned Counsel for the claimants states at the Bar that the above-referred to award of the Reference Court awarding additional amount of compensation to the claimants at the rate of Rs.19.20 ps. per sq.mt. is accepted by the acquiring authorities and was not challenged before higher forum. The statement made at the Bar by the learned Counsel for the claimants is not controverted by the learned Assistant Government Pleader for the appellants. In view of time gap between the two notification published u/s. 4(1) of the Act, the claimants would be entitled to benefit of reasonable rise in prices of lands at the rate of 10% per annum. It is not disputed by the learned counsel for the

appellants that on the basis of previous award of the reference court, the claimants would be entitled to additional amount of compensation at the rate of Rs.63/- per sq.mt. Mr. Saurabh Amin, learned counsel for the claimants has brought to the notice of this Court judgment dated December 28, 2006 rendered by the Division Bench of this Court in First Appeal No.5346 of 2006 to First Appeal No.5351 of 2006 for perusal. It indicates that pursuant to publication of notification issued under Section 4(1) of the Act which was published in the Official Gazatte on June 4, 1993 the lands of Dhandhuka town were acquired for public purpose of construction of Narmada Canal. Therein the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1/- per Sq.mt. Feeling aggrieved references were sought. Accordingly the references were made to the District Court Ahmedabad (Rural) at Navrangpura were they were registered as Land Acquisition Case No.950 to 952 of 1998. The Reference Court by judgment and

award dated October 29, 2005 had awarded additional amount of compensation to the claimants at the rate of Rs.63/- per sq.mt. Feeling aggrieved the acquiring authorities had filed First Appeal No.5346 to 5351 of 2006. From the judgment dated December 28, 2006 of the High Court, it is evident that the High Court did not find any substance in the appeals and were, therefore, dismissed.

9. Mr.Amin has brought to the notice of this Court another judgment dated February 27, 2007 rendered by the Division Bench of this Court in First Appeal No.1118 to 1128 of 2007. It indicates that pursuant to publication of notification under Section 4(1) of the Act in the Official Gazatte on June 4, 1993 the lands of village Dhandhuka were acquired for public purpose of construction of canal under Narmada Project. In those cases the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.1.50 ps per

sq.mt. for irrigated lands and Rs.1/- per sq.mt. for non-irrigated lands by his award dated May 30, 1996. Feeling aggrieved the claimants had sought references. Accordingly references was made to the District Court Ahmedabad (Rural) were they were registered as Land Acquisition Case Nos. 2656 to 2666 of 1996. The Reference Court by judgment and award dated October 29, 2005 awarded additional amount of compensation at the rate of Rs.63/- per sq.mt. Feeling aggrieved, the acquiring authority had preferred First Appeal Nos.1118 to 1128 of 2007. In those First Appeal, the court did not find any substance and, therefore, they were dismissed by judgment dated February 27, 2007. Thus, reference to the judgments rendered by the High Court would indicate that with reference to same date of notification published under Section 4(1) of the Act the claimants in other cases were awarded additional amount of compensation at the rate of Rs.63/- per sq.mt by the Reference Court and that the awards of the Reference Court were confirmed

by the High Court.

10. It is well-settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining market value of similar lands acquired from the same village subsequently. On the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of this very village for the purpose of determining market value of the lands acquired in the instant case. On reappreciation of evidence adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The learned Assistant Government Pleader for the appellants could not persuade this Court to take a view

different than the one taken by the Reference Court on appreciation of evidence adduced by the parties. Therefore, the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, the instant appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

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